

Panaji, 20th December, 2018 (Agrahayana 29, 1940)

SERIES II No. 38



OFFICIAL GAZETTE

GOVERNMENT OF GOA

PUBLISHED BY AUTHORITY

Note:- There is one Extraordinary issue to the Official Gazette, Series II No. 37 dated 13-12-2018 namely, Extraordinary dated 18-12-2018 from pages 703 to 704 regarding Notification and Order from Department of Elections.

This is issued with the concurrence of the Goa Public Service Commission, Panaji vide letter No. COM/11/11/11(1)/2014/875 dated 19-11-2018.

By order and in the name of the Governor of Goa.

Sanjiv M. Gadkar, Registrar & ex officio Addl. Secretary (Co-operative Societies).

Panaji, 6th December, 2018.

Notification

No. 60/35/WRDSCCSL/TS/RCS

In exercise of the powers vested in me under Section 8(1) of the Goa Co-operative Societies Act, 2001, "The WRD Staff Co-operative Credit Society Ltd.", Porvorim, Bardez-Goa, has been registered under code symbol No. 60/35/WRDSCCSL/TS/RCS.

Sandhya Kamat, Registrar (Co-operative Societies).

Panaji, 13th December, 2018.

Certificate of Registration

"The WRD Staff Co-operative Credit Society Ltd.", Porvorim, Bardez-Goa, is registered on 13-12-2018 and it bears registration No. 60/35/WRDSCCSL/TS/RCS. The said society is classified as "Resource Society" in terms of Rule 8(1) of the Goa Co-operative Societies Rules, 2003 under class (10) and sub-classified as "Credit Resource Society" in terms of sub-class 10(a) of the said Rules.

Sandhya Kamat, Registrar (Co-operative Societies).

Panaji, 13th December, 2018.



Department of Labour

Notification

No. 28/3/2018-LAB/Part-III/760

The following award passed by the Labour Court-II, at Panaji-Goa on 25-09-2018 in reference

No. LC-II/IT/08/2014 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Neetal P. Amonkar, Under Secretary (Labour).

Porvorim, 28th November, 2018.

THE LABOUR COURT-II
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Suresh N. Narulkar, Hon'ble Presiding Officer)

Case No. LC-II/IT/08/2014

Shri Pooja Naik,
H. No. E-133, Bondir,
Tiswadi-Goa. Workman/Party I

V/s

The Director,
M/s. WLC College (India) Ltd.,
At Solsons Trade Centre,
3rd Floor, Near Coueiro
in Junction,
Porvorim, Bardez-Goa. Employer/Party II
Workman/Party I represented by Adv. Shri V. Palekar.
Employer/Party II represented by Adv. Shri P. Agarwal.

Panaji, Dated: 25-09-2018

AWARD

1. In exercise of the powers conferred by Clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947), the Government of Goa, by Order dated 30-09-2014, bearing No. 28/31/2014-Lab/510, referred the following dispute for adjudication to the Industrial Tribunal of Goa. The Hon'ble Presiding Officer, Industrial Tribunal-cum-Labour Court in turn assigned the present dispute to this Labour Court-II vide her order dated 08-10-2014.

- "(1) Whether Ms. Pooja Naik can be construed as a 'workman' under Clause (s) of Section 2 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947)?
- (2) If the answer to the issue No. (1) above is in the affirmative, then whether the action of the management of M/s WLC College (India) Limited, Porvorim, Goa, in refusing employment to Ms. Pooja Naik, with effect from 03-01-2013, is legal and justified?

(3) If the answer to the issue No. (2) above is in the negative, then, to what relief the Workman is entitled?"

2. On receipt of the reference, a case was registered under No. LC-II/IT/08/14 and registered A/D notice was issued to the Parties. In pursuance to the said notice, the Parties put in their appearance. The Workman/Party-I (for short 'Workman'), filed her Statement of Claim on 16-02-2015 at Exb-4. The facts of the case in brief as pleaded by the Workman are that she was employed with the Employer/Party II (for short, 'Employer') as a "Campus Director" vide letter of appointment dated 27-10-2013 at a salary of Rs. 40,000/- p.m. She stated that the title of designation allotted to her post in which she was employed, was camouflaged as a Campus Director although in reality the nature of duties performed by her are that of a workman. She stated that in the course of her duty amongst others, she was performing the work such as correction of papers of the students, performing administrative work in the campus, teaching HR subjects on skype to students, visiting various companies to find jobs for the students, clerical jobs such as filing, typing etc. and talking to people for enrolling new students, marketing of the course etc. She stated that she was imparted training at her cost vide agreement dated 20-11-2012 in furtherance of letter of appointment dated 21-10-2012. She stated that considering the fact that the Employer would impart training at their cost, they had unilaterally assessed the training cost as Rs. 80,000/-. She stated that the Employer also collected a blank cheque bearing No. 049462 by way of security bond to ensure that she shall work with them for a minimum of 24 months. She stated that the said cheque was taken from her on 27-10-2012 on which date she was issued an appointment letter. She stated that the said cheque was taken to meet the cost of training that was proposed to be imparted to her in the event she do not continue with the Employer for a minimum of 24 months. She stated that she was directed to report for the training to be held at Pune with direction to attend the training at her cost with an assurance that the expenses incurred by her would be reimbursed on her return and on submission of the bills towards expenses incurred by her. She stated that accordingly she attended the training at her cost and on return submitted the bills towards expenses incurred by her. She stated that the Employer has however, failed to reimburse the expenses incurred by her. She stated that the Employer failed to impart training at their cost as undertaken by them in as much as the

Employer failed to reimburse to her the expenses incurred by her for the said training. She stated that the total expenses incurred by her and which are due and payable to her by the Employer are Rs. 10,000/- She stated that she was following with the management repeatedly requesting for refund of the expenses incurred by her. However, nothing materialized in spite of the fact that the said expenses of Rs. 10,000/- were approved and sanction by them. She stated that on the contrary, the Employer, unilaterally, arbitrarily and illegally informed her that her services stands terminated with immediate effect from 03-01-2013. She stated that she was apparently victimized because she was insisting upon refund of the expenses incurred by her on training. She stated that she was further deprived of her job for insisting upon the amount that was due and payable to her as a matter of right. She stated that she, vide her letter dated 18-02-2013, filed a complaint before the Labour Commissioner, pursuant to which the Employer was called upon for discussion to resolve the issue. She stated that order of termination was communicated to her by Mr. Nag, vide his email dated 03-01-2013 from his email Sanjib.nag@wlci.in. She stated that the Employer, with its malicious objective, presented the said cheque bearing No. 049462 obtained by them from her by way of security for minimum period of employment and upon being dishonoured, caused to issue a notice to her threatening to prosecute her u/s 138 of the Negotiable Instrument's Act. She stated that she replied to the said notice appropriately. Being aggrieved by the decision of the Employer in illegally terminating her services, she raised the dispute which ended in failure. She contended that the action of the Employer in denying employment to her is illegal and contrary to law. She stated that she has been trying to secure a job for her, however, till date she is unable to get the job. She stated that she is now totally dependent upon her brother for sustenance. The Workman therefore prayed that the action of the Employer in terminating her services be held as illegal, unjust and unfair and direct the Employer to order an reinstatement with full back wages and also further prayed for refund of the amount of Rs. 10,000/- towards the reimbursement of expenses incurred by her.

3. The Employer resisted the claim of the Workman by filing its written statement on 30-06-2015 at Exb. 8. The Employer, as and by way of its preliminary objections submitted that the reference is not maintainable as the Party I is not a 'workman' as defined u/s 2 (s) of the I.D. Act, 1947 nor the dispute referred for adjudication is an

'industrial dispute' as defined u/s 2 (k) of the said Act, that the alleged employment dispute shall be decided in accordance with the contract entered into between the parties, that the parties had agreed upon to submit all the disputes to the jurisdiction of the court at Delhi and therefore neither any court nor any authority including this Hon'ble Labour Court has any jurisdiction to try and entertain any dispute between the parties, that being appointed as a 'Campus Director', the Party I was performing supervisory as well as managerial functions and that the Goa Campus of the Employer is closed with effect from 31-07-2014.

4. The Employer stated that it is a company incorporated under the provisions of the Companies Act, 1956. The Employer stated that it is primarily engaged in professional education and training to the students in the field of business, marketing, human resource, operations, finance, fashion, graphic design and advertising, media or test preparations. The Employer stated that it has campuses all over India, such as Bangalore, Chennai, Hyderabad, Culcutta, Mumbai, Delhi, Nagpur and Pune. The Employer stated that it has also a campus outside India i.e. at Katmandu. The Employer stated that the Party I was appointed as Campus Director for Goa, vide its appointment letter dated 27-10-2012 on a monthly salary of Rs. 40,000/- p.m. The Employer stated that it has executed a service agreement dated 20-11-2012 with the Party I mentioning the terms and conditions of employment as well as responsibilities and conduct at the employment. The Employer stated that in terms of the said agreement dated 20-11-2012, the Party I had to undergo a well-designed induction training programme. The Employer stated that since they had to spend its time, money and energy in imparting training to the Party I, it was agreed under the said agreement that the Party I shall repay the same by working for a minimum period of 24 months with them. The Employer stated that the Party I was imparted training for a week and after the training, the Party I was supposed to report at Goa campus. The Employer stated that the Party I attended the work for about 63 days after her training. The Employer stated that the Party I worked with them up to 02-01-2013 and left the work with effect from 03-01-2013. The Employer stated that as the Party I left its services without completing 24 months of service after imparting the training to her and as such she is liable to pay compensation equivalent to 2 months' salary i.e. Rs. 80,000/- to them. The Employer stated that in order to discharge her said liability, the Party I had issued

a cheque bearing No. 049462 dated 25-03-2013 of Rs. 80,000/- towards the expenses incurred by them on her initial training and startup cost which was agreed by the Party I. The Employer stated that however, the said cheque was dishonoured and returned to them by its bankers for funds insufficient. The Employer stated that the subject matter of the said dishonour of cheque was being adjudicated initially before the Court of Delhi and presently before the JMFC, Mapusa, Goa.

5. The Employer stated that being a 'campus director', the Party I was performing teaching as well as supervisory as well as managerial functions. The Employer stated that the Party I, by virtue of the powers vested in her, she was entitled to sanction leave, review performance, take disciplinary actions, sanction funds, appoint employees, regulate the working hours and perform such other functions of supervisory and managerial nature. The Employer stated that the Party I was also required to provide training and teaching to the students recruited with the support of subordinate staff working under her. The Employer stated that its Goa campus has been closed w.e.f 31-07-2014 and as such the question of granting relief to the Party I does not arise. Without prejudice to its aforesaid contention, the Employer stated that they are willing to offer her employment at Calcutta campus, if the Party I is interested in working with them. The Employer stated that the Party I may therefore report to Mr. Bipul Sutradar at 3rd floor, Natya bhavan, Block EE No.8, Sector II, Salt Lake City, Kolkatta-700091. The Employer stated that the Party I holds a qualification of LLB degree and has been practicing law and represents litigants soon after she filed the complaint before the ALC, Panaji, Goa. The Employer denied the overall case as pleaded by the Party I and prayed for dismissal of the present reference.

6. Thereafter, the Party I filed her Re-joinder on 03-08-2015 at Exb. 9. The Party I, by way of her Re-joinder, confirms and reiterates all her submissions, averments and statements made in her Claim Statement to be true and correct and denied all the statements, averments and submissions made by the Employer in its Written Statement, which are contrary to her Statement and averments made in her Claim Statement. The Party I stated that she is ready to join the place at which the Employer propose to transfer, however, she is not ready to join till the Employer pays her entire back wages till date along with other dues. She stated that she would join the new place of work only after the receipt of the amount required to travel to the new place of work along with the

details of accommodation arrangement made for her by them taking into consideration the past bitter experience of the Employer and their conducts in discharging their commitments.

7. Based on the pleadings filed by the respective parties, this court framed the following issues on 23-11-2015 at Exb. 11.

1. Whether the Workman/Party I proves that she is a "workman" as defined u/s 2 (s) of the I.D. Act, 1947?
2. Whether the Workman/Party I proves that the action of the Employer/Party II in refusing employment to her w.e.f 03-01-2013 is illegal and unjustified?
3. Whether the Employer/Party II proves that the present Order of Reference is not maintainable in view of the reasons mentioned in para 2 (b to e) of its written statement?
4. Whether the Workman is entitled to any relief?
5. What Order? What Award?

8. My answers to the aforesaid issues are as under:

- (a) Issue No. 1 : In the Negative.
- (b) Issue No. 2 : Does not arise.
- (c) Issue No. 3 : In the Affirmative.
- (d) Issue No. 4 and 5 : As per final order.

REASONS

I have heard the oral arguments of Ld. Adv. Shri V. Palekar, appearing for the Workman as well as Ld. Adv. Shri P. Agarwal, appearing for the Employer.

9. Ld. Adv. Shri V. Palekar, appearing for the Workman, during the course of his oral arguments submitted that the Workman was appointed as Campus Director with the Employer w.e.f. 27-10-2013 on a monthly salary of Rs. 40,000/-. He submitted that as a Campus Director for Goa unit of the Employer the predominant nature of duties and responsibilities of the Party I were to correct the papers of the students, performing administrative work in the campus, teaching HR subject on Skype to students, visiting various companies to find jobs for the students, clerical jobs such as filing, typing etc. and talking to people for enrolling new students and marketing of the post etc. He submitted that the said predominant duties and responsibilities attached to the post of Campus Director for the Goa region of the Employer are squarely falls within the definition of

Section 2 (s) of the I.D. Act, 1947 and as such Party I is a 'workman' within the meaning of Section 2 (s) of the I.D. Act, 1947. He submitted that the Employer by its email dated 14-12-2016, unilaterally, arbitrarily and illegally terminated the services of the Workman w.e.f. 03-01-2013. He submitted that the Workman is unemployed from the date of her termination till date. He submitted that the Workman is therefore entitled for reinstatement in service with full back wages and continuity in service. In support of his oral submissions he relied upon two judgments of Hon'ble High Court of Bombay one, in the case of **Goa Urban Co-op. Bank Ltd. v/s. Mr. Rui A.E. Pereira and Anr.**, passed in writ petition No. 40/2004 and another in the case of **R. A. Gonsalves, since deceased through his legal heirs v/s. Hotel Corporation of India Ltd. and Anr., reported in 2004 5 Bom. C.R. 85.**

10. Per contra, Ld. Adv. Shri P. Agarwal, representing the Employer, during the course of his oral arguments submitted that undisputedly the Party I was appointed as Campus Director for its Goa region vide appointment w.e.f. 27-10-2013 on a monthly salary of Rs. 40,000/- He submitted that the Employer also signed an agreement with the Party I by service agreement dated 20-11-2012 mentioning terms and conditions of her employment. He submitted that as a Campus Director for Goa region, the duties and responsibilities of the Party I were professional education and training to the students in the field of business, marketing, human resource, operations, finance, fashion, graphic design and advertising, media or test preparation. He submitted that the said duties and responsibilities which the Party I was performing as a Campus Director for its Goa region were supervisory, administrative and managerial in nature and as such the Party I is not a workman within the meaning of Section 2 (s) of the I.D. Act, 1947. He submitted that in terms of clause of the provisions of the said service agreement executed by the Employer with the Party I, this court has no jurisdiction to adjudicate the present reference but any dispute which arose on account of the employment of the Party I with the Employer shall be filed within the jurisdiction and territory of Delhi. He submitted that the Employer closed its Goa unit somewhere in the month of 2004. He submitted that the Party I is having LLB degree and practicing law soon after the termination of her services by the Employer. He submitted that the Party I has however, falsely stated that she is unemployed after the termination of her services by the Employer. He submitted that the Party I was

given offer of employment at its Kolkatta unit in the written statement filed by the Employer. He submitted that the Party I has however, refused the said offer of employment by contending that the Employer shall pay the entire back wages as well as training cost to her first. He therefore submitted that the Party I is not entitled to any relief of reinstatement in service with continuity in service and full back wages.

I have carefully perused the entire records of the present case. I have also carefully considered the legal submissions advanced by the Ld. Advocates appearing for the respective parties and is of the considered opinion as under.

REASONS

11. Issue No. 1:

The Party I has examined herself to prove her case. The Party I in her affidavit in evidence stated that she used to perform the work such as correction of the papers of the students, performing administrative work in the campus, teaching HR subject on Skype to students, visiting various companies to find jobs for the students, clerical jobs such as filing, typing etc. and talking to people for enrolling new students and marketing of the post etc. The Party I, however, in her cross examination, deposed that at the time of her interview the management of the Employer had clearly told her that besides the duties of managing and supervising the campus in Goa, she was made to perform the duties of administrative work and that she was given the responsibilities of correction of papers, approaching various companies for absorbing the students for internship, marketing of their courses in order to get new admissions, teaching HR subjects on Skype etc. she further stated that in the service agreement signed between the Employer and herself, her duties and responsibilities has been specifically spelt out in Clause 8 to 29 of the said service agreement.

12. On the contrary, the Employer examined one Shri Vinay Pasricha, its Chairman. The said witness of the Employer in his oral evidence on record stated that the Party I was employed as Campus Director which is a managerial and supervisory in nature and that she was drawing a salary of Rs. 40,000/- p.m. and as such the Party I is not a Workman. In his cross-examination he deposed that he do not know as to how many staff were employed at Goa campus and that how much salary paid to the said staff and their nature of duties. Further, he deposed that he has not visited the Porvorim College of the Employer from January, 2012 till

December, 2013. He admitted that he has not personally witnessed the work performed by any of the employees working at Porvorim including the Party I.

13. Thus, it appears from the evidence adduced by both the parties, the Party I was designated as campus director on a salary of Rs. 40,000/- p.m. by appointment letter dated 27-10-2013. The nature of duties predominantly performed by the Party I were to correct the papers of the students, performing administrative work in the campus, teaching HR subject on skype to students, visiting various companies to find jobs for the students, talking to people for enrolling new students, marketing of the course etc. The Party I was also entitled to sanction leave, review performance, take disciplinary actions, sanction funds, appoint employees and regulating the working hours. The aforesaid duties and responsibilities performed by the Party I being Campus Director of the Employer cannot be called as manual, unskilled, skilled, technical, operational and clerical in nature as stated in first part of the definition of the workman, but the aforesaid duties and responsibilities are certainly administrative, managerial and supervisory in nature and drawing a salary of Rs. 40,000/- p.m.

14. In the case of **R. A. Gaonsalves since deceased through heirs (supra)**, of Hon'ble High Court of Bombay, the Petitioner was lastly designated as supervisor and his job description and the nature of the work performed by the employee was none other than that of manual and clerical in nature. Merely because on certain occasions, he was required to supervise over others who work along with him. The said duties was not dominant nature of his work. Incidental supervision of others working along with him could not lead to the conclusion that the employee was not covered by the definition of the Workman. The principle laid down by the Hon'ble High Court of Bombay in its aforesaid case is not applicable to the case in hand as the facts of the case in hand is totally different than the case before the Hon'ble High Court.

15. In the case of **Goa Urban Co-op. Bank Ltd., (supra)** of Hon'ble High Court of Bombay, by order 29-12-2000, the Hon'ble Industrial Tribunal awarded that the termination of services of the Respondent No. 1 with effect from 23-09-2000 was illegal, arbitrary and unjustified and further ordered to be reinstated with full back wages and all other benefits with continuity in service. The petitioner challenged the award of the Industrial Tribunal

before the Hon'ble High Court of Bombay. The Hon'ble High Court upheld the award passed by the Industrial Tribunal, however, instead of directing full back wages modified to the extent of payment of 75% of back wages. The facts of the said case before the Hon'ble High Court is totally different than the case in hand and hence, the principle laid down by the Hon'ble High Court is not applicable to the case in hand.

The Party I is therefore not a 'workman' within the meaning of Section 2 (s) of the I.D. Act, 1947. Hence, it is held that the Party I failed to prove that she is a 'workman' within the meaning of Section 2 (s) of the I.D. Act, 1947. The issue No. 1 is therefore answered in the negative.

16. Issue No. 2, 3 and 4:

While deciding the issue No. 1 hereinabove, I have discussed and came to the conclusion that the Party I is not a 'workman' within the meaning of Section 2 (s) of the I.D. Act, 1947.

This Labour Court II has therefore no jurisdiction to decide as to whether action of the Employer in refusing employment to her w.e.f. 03-01-2003 is legal and justified. The issue No. 2 does not arise.

As the Party I is not a 'workman' within the meaning of Section 2 (s) of the I.D. Act, 1947 and as such the dispute raised by the Party I is not an 'industrial dispute' within the meaning of Section 2 (k) of the I.D. Act, 1947. The issue No. 3 is therefore answered in the affirmative. The Party I is therefore not entitled to any relief. The issue No. 4 is answered in the negative.

In view of the above, I proceed to pass the following order:

ORDER

- (1) It is held that the action of the management of M/s WLC College (India) Limited, Porvorim, Goa, in refusing employment to Ms. Pooja Naik, with effect from 03-01-2013, is legal and justified, does not survive, being incompetent.
- (2) The Party I, Ms. Pooja Naik, Campus Director is not entitled to any relief.
- (3) No order as to costs

Inform the Government accordingly.

Sd/-

(Suresh N. Narulkar),
Presiding Officer,
Labour Court-II.

Notification

No. 28/3/2018-LAB/Part-III/761

The following award passed by the Labour Court-II, at Panaji-Goa on 21-09-2018 in reference No. LC-II/IT/41/2014 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Neetal P. Amonkar, Under Secretary (Labour).

Porvorim, 28th November, 2018.

IN THE LABOUR COURT-II
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Suresh N. Narulkar, Hon'ble Presiding Officer)

Case No. Ref. IT/41/04

Shri Nandal Madkaikar,
R/o. Voilem Bhat,
Merce, Tiswadi-Goa. ... Workman/Party-I

V/s

M/s. Airsonic Holidays Pvt. Ltd.,
Landscape Building,
Next to Indus Ind. Bank,
Opp. Football Stadium,
Campal, Panaji-Goa. ... Employer/Party-II

Workman/Party-I represented by Shri Subhash Naik Jeorge.

Employer/Party-II represented by Adv. Shri D. Gaonkar.

Panaji, Dated: 21-09-2018

AWARD

1. In exercise of the powers conferred by Clause (d) of sub section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by Order dated 11-10-2004 bearing No. 28/16/2004-LAB/733 referred the following dispute for adjudication to the Industrial Tribunal of Goa. The Government of Goa vide its subsequent order dated 09-02-2016 transferred the present reference to this Labour Court-II for its adjudication from Industrial Tribunal-cum-Labour Court, Panaji-Goa.

"(1) Whether the action of the management of Airsonic Holidays Pvt. Ltd., Panaji, Goa, in terminating services of its Workman Shri Nandal Madkaikar, Ground Courier, with effect from 01-10-2001, is legal and justified?

(2) If not, what relief the Workman is entitled to?"

2. On receipt of the reference, a case was registered under No. IT/41/2004 and registered A/D notice was issued to the Parties. In pursuance to the said notice, the parties put in their appearance. The Workman/Party-I (for short 'Workman'), filed his Statement of Claim on 27-01-2005 at Exb. 4. The facts of the case in brief as pleaded by the Workman are that M/s. Airsonic Holidays Private Limited is engaged in the business of selling Airline tickets as well as in courier service. He stated that he was employed with the Employer/Party II (for short, 'the Employer') as a Ground Courier since 01-10-1994. He stated that his duties as a ground courier was to deliver letters, documents, parcels to the houses, factories, banks, commercial establishments etc. as well as to collect letters, documents, parcels from its customers. He stated that he was issued an appointment letter dated 27-09-1994 as well as confirmation letter dated 27-01-1996 by Airfreight Ltd. He stated that the said company had a courier division by name DHL Worldwide Express. He stated that the said Company also had a franchise by name Airsonic Holidays Pvt. Ltd., which had a courier division by name Airsonic Worldwide Express. He stated that all the aforesaid nomenclature were used in the letter heads of the Employer and hence, they are one establishment for the purpose of the present reference. He stated that on 30-06-2001, he was issued another appointment letter although his service and monthly salary was continued. He stated that on 01-10-2002, the Employer issued a letter dated 30-09-2002 on the letter head of Airsonic Worldwide Express terminating his services w.e.f. 02-10-2002.

3. Aggrieved by the decision of the Employer in terminating his services illegally and without justification, he addressed a letter to the Employer demanding reinstatement in service with full back wages and continuity of service. He stated that he also raised an industrial dispute vide his letter dated 10-03-2003 which ended in failure. He contended that the termination letter was not issued by the appointing authority i.e. Airsonic Holidays Pvt. Ltd. He submitted that at the time of termination of his service neither he was issued one months' notice nor paid one month pay in lieu of notice to him. He submitted that no retrenchment compensation was paid to him as per the provisions of Section 25-F of the I.D. Act, 1947. He submitted that no seniority list was prepared at the time of his termination of service and that principles of last come first go was not followed. He submitted

that he had put in over 240 days of service prior to his termination and hence, the termination of his service is in violation of mandatory provisions of Section 25-F as well as 25-G of the I.D. Act, 1947. He submitted that at the time of termination, he was drawing a monthly wages of Rs. 4700/- along with travelling allowances of Rs. 1.25 per km. as petrol charges for the motor cycle used by him. He submitted that the Employer recruited new employees in his place and that no preference in employment was given to him as per provisions of Section 25-H of the I.D. Act, 1947. He submitted that the termination letter was not been issued to him by the competent authority and that the establishment which appointed him, has not issued him a termination letter. He submitted that Mr. Paul Sequeira, Branch Manager, Airsonic Worldwide Express had no authority to terminate his services. The Workman therefore prayed that as his termination of service is illegal and unjustified, he may be awarded reinstatement in service with full back wages and continuity in service.

4. The Employer resisted the claim of the Workman by filing his reply dated 25-04-2005 at Exb. 5. The Employer, as and by way of its reply, submitted that the reference is not maintainable as the Workman at the time of his discharge was an employee of "Airsonic Worldwide Express" and that he was discharge from service by the said Airsonic Worldwide Express. The Employer therefore submitted that Airsonic Worldwide Express is therefore a necessary party to the present reference.

5. The Employer stated that the Workman has raised the present dispute on the ground that his termination from service is in contravention of the provisions of the I.D. Act by contending that his termination amounts to retrenchment and that the law in relation to retrenchment has not been followed. The Employer stated that the Workman has been discharged from service and that it is a discharge simplicitor which does not amounts to retrenchment of service. The Employer stated that the Workman applied for a job as a ground operation (courier) with Airsonic Travels Pvt. Ltd. vide his application dated 28-06-2001. The Employer stated that the said Airsonic Travels Pvt. Ltd is a company incorporated under the Companies Act, 1956 and was in the business of travel agent. The Employer stated that Airsonic Holidays Limited is a sister concern of Airsonic Travels Pvt. Ltd. which was engaged in the business of travel agent as well as courier service. The Employer stated that the said company issued an appointment letter dated 30-06-2001 to the Workman with effect from

02-07-2001 as a ground courier on a consolidated salary of Rs. 56,400/- p.a. The Employer stated that clause 1 of the said appointment order states that "probation-Your appointment will be under probation for a period of six months from the date of joining but management reserves the right to extend the period, if necessary. If at the end of the period of probation, you are found suitable, we will confirm your appointment in writing". The Employer stated that similarly clause 5 of the said appointment letter provides for termination of employment and is extracted as "termination of employment-during the probation period either party will be entitled to terminate the contract of employment by giving one months' notice. After confirmation, termination of employment by either parties will be giving three months' notice. The Employer stated that the said appointment order was served upon the Workman containing terms and conditions and the Workman was asked that if the terms and conditions are acceptable to him to return the duplicate copy of the letter duly signed as token of acceptance of the appointment. The Employer stated that the Workman acknowledged the said letter and returned the duplicate copy of the same duly signed on 02-07-2001 agreeing to the terms and conditions. The Employer stated that the said company after sometime stopped the activities as courier services. The Employer stated that the activities were taken over by the newly constituted agency known as Airsonic Worldwide Express which was registered as a company. The Employer stated that by letter dated 15-12-2001, the Workman was informed that he would be an employee of the Employer and that since that day the Workman was an employee of the Employer and was also paid his salaries by the Employer. The Employer stated that by its letter dated 31-12-2001, the Employer extended the probation period of the Workman for a further period of six months. The Employer stated that the services of the Workman was found to be unsatisfactory. The Employer stated that the Workman was found to be negligent while at work and that he was also issued memo of negligence. The Employer submitted that the Workman was discharged from his service by its letter dated 30-09-2002 since it was not found feasible to continue with the services of the Workman. The Employer stated that the Workman was paid salary of one month in lieu of notice of one month. The Employer stated that it has stopped the business of courier services w.e.f. 31-05-2012 and therefore it is no more in the business of courier services. The Employer stated that the employees who were in its courier services have left their services since they were

told in advance that it was going to stop the business of courier services. The Employer denied the overall case as pleaded by the Workman and prayed for dismissal of the present reference.

6. Thereafter, the Workman filed his rejoinder on 05-07-2005 at Exb. 6. The Workman, by way of his Re-joinder, confirms and reiterates all the submissions and averments made by him in his claim statement to be true and correct and denies all the statements and averments made by the Employer in its Written Statement, which are contrary to the statements and averments made by him.

7. Based on the pleadings filed by the respective Parties, the Hon'ble Presiding Officer, Industrial Tribunal-cum-Labour Court framed the following issues at Exb. 9. The issue No. 3A was framed as an additional issue at Exb. 13 on 30-11-2007.

1. Does the Party I prove that he was appointed as Ground Courier with the Party II?
2. Does the Party I prove that the Party II, Airfreight Ltd., and DHL Worldwide Express and Airsonic Worldwide Express are one establishment?
3. Does the Party II prove that the said Airsonic Worldwide Express is necessary party to the proceedings?
- 3-A. Whether the Party II terminated service of Party I or discharged the Party I from service w.e.f. 01-10-2002?
4. Whether the action of the Party II in terminating services of the Party I, Ground Courier, w.e.f. 1-10-2001 is legal and justified?
5. To what relief Party I is entitled?
6. What Award?
8. My answers to the aforesaid issues are as under:

- | | | |
|---------------------|---|---------------------|
| (a) Issue No. 1. | : | In the Affirmative. |
| (b) Issue No. 2 | : | In the Negative. |
| (c) Issue No. 3 | : | Does not arise. |
| (d) Issue No. 3A | : | In the Affirmative. |
| (e) Issue No. 4 | : | In the Affirmative. |
| (f) Issue No. 5 & 6 | : | As per final order. |

REASONS

I have heard the oral arguments of Ld. Shri Subhash Naik Jeorge, appearing for the Workman as well as Ld. Adv. Shri D. Gaonkar, appearing for the Employer. The Workman also chose to file his synopsis of written arguments.

9. Ld. Rep. Shri Subhash Naik Jeorge, appearing for the Workman submitted that the Workman was employed as a ground courier with the Employer since 01-10-1994. He submitted that the Workman was issued another appointment letter dated 30-06-2001 in the name of Airsonic Holidays Pvt. Ltd. He submitted that the services of the Workman was terminated w.e.f. 02-10-2002 vide letter dated 30-09-2002 issued by Airsonic Worldwide Express which was received by the Workman on 01-10-2002. He submitted that the Employer admitted that its name was changed from Airsonic Holidays Pvt. Ltd. to Airsonic Worldwide Express vide their letter dated 15-12-2001. He submitted that the Employer has also issued an experience certificate dated 01-10-2002 to the Workman on its letter head Airsonic Worldwide Express stating that the Workman has worked with them from 01-07-2001 to 30-09-2002. He submitted that the said facts itself proves that the Workman has worked over 240 days prior to termination of his services. He submitted that at the termination of services of the Workman, he was not paid retrenchment compensation as required u/s 25-F of the I.D. Act, 1947. He submitted that at the time of termination of services of the Workman no seniority list was prepared in the cadre in which the Workman was working. He therefore submitted that the termination of services of the Workman is in violation of Section 25-F as well as 25-G of the I.D. Act, 1947. He submitted that the Workman is unemployed since the date of his termination. He therefore submitted that the Workman is therefore entitled for reinstatement in service with full back wages and continuity in service. In support of his contentions, he relied upon judgment of Hon'ble Apex Court in the case of **Huvnesh Kumar Dwivedi v/s. M/s. Hindalco Industries Ltd.**, as well as in the case of **Deepali Gundu Surwase v/s. Kranti Junior Adhyapak Mahavidyalaya (D.Ed) and Ors.**, reported in 2014 II CLR 813.

10. Per contra, Ld. Adv. Shri D. Gaonkar, representing the Employer, during the course of his oral arguments submitted that the Employer had issued an appointment letter dated 30-06-2001 to the Workman as a Ground Courier with effect from 02-07-2001 in pursuance of his application for a ground operation (courier) with Airsonic Travels Pvt. Ltd. vide his application dated 28-06-2001. He submitted that Airsonic Travels Pvt. Ltd. is a Company incorporated under Companies Act, 1956 and was conducting business as travel agent. He submitted that the Employer after sometime stopped the activities as courier services and was taken over by newly constituted agency known as

Airsonic Worldwide Express. He submitted that the Employer, vide its letter dated 15-12-2001, the Workman was informed that he would be an employee of the said Airsonic Worldwide Express and was paid his salary by the said Employer. He submitted that the Employer by its letter dated 31-12-2001 extended the probation period of the Workman by further period of six months. He submitted that he was found to be negligent while at work and he was also issued memo for negligence. He submitted that as the services of the Workman was found unsatisfactory, he was discharged from service by its letter dated 30-09-2002 since it was not found feasible to continue with his services. He submitted that the services of the Workman has been terminated in pursuance of clause 1 as well as clause 5 of the appointment letter dated 30-06-2001 issued to him. He submitted that the services of the Workman has been terminated by way of discharge simplicitor and it cannot be termed as retrenchment. He submitted that as the services of the Workman has not been terminated by way of retrenchment, there is no question of making payment of retrenchment compensation as required u/s 25-F of the I.D. Act, 1947. He submitted that similarly, there is no question of making any seniority list in the cadre in which he was working. He submitted that the termination of services of the Workman is just, legal and proper and there is no any kind of illegality. He submitted that Airsonic Holidays Pvt. Ltd. has not been made a party to the present proceedings and as such the claim of the Workman does not survive. He submitted that there is nothing on record to show that the Employer i.e. the Airsonic Worldwide Express, Airsonic Holidays Pvt. Ltd., Airfreight Ltd. and DHL Worldwide Express are one and the same Company. He therefore prayed for the dismissal of the present reference.

I have carefully perused the entire records of the present case. I have also carefully considered the oral submissions advanced by the respective parties.

11. Issue No. 1:

The Employer, in para 5 of its reply, filed in the present proceedings admitted that the Workman was issued an appointment letter dated 30-06-2001 as a 'Ground Courier' w.e.f 02-07-2001. The Workman also produced on record his appointment letter dated 30-06-2001 (Exb. 19) which clearly proves that the Workman was appointed by the Employer as a Ground Courier in its service. The Workman therefore proved that he was appointed as a Ground Courier by the Employer. The issue No. 1 is therefore answered in the affirmative.

12. Issue No. 2:

The burden to prove issue No. 2 was on the Workman. The Workman was therefore required to prove that all these establishments namely Airsonic Worldwide Express, Airsonic Holidays Pvt. Ltd., Airfreight Ltd. and DHL Worldwide Express were one and the same. It is the contention of the Workman that all the aforesaid names are appearing on the letter head of the Employer and as such all the said establishments are one and the same. Besides, the oral evidence as aforesaid, there is nothing on record to prove the relationship of the Airsonic Worldwide Express, Airsonic Holidays Pvt. Ltd., Airfreight Ltd. and DHL Worldwide Express that they are one and the same establishment. Thus, in the absence of any material evidence on record, it cannot be held that Airsonic Worldwide Express, Airsonic Holidays Pvt. Ltd., Airfreight Ltd. and DHL Worldwide Express are one and the same establishment. It is therefore held that the Workman failed to prove that Airsonic Worldwide Express, Airsonic Holidays Pvt. Ltd., Airfreight Ltd. and DHL Worldwide Express are one and the same establishment. The issue No. 2 is therefore answered in the negative.

13. Issue No. 3:

The burden to prove issue No. 3 was on the Employer. However, during the course of hearing, the Workman made an application dated 31-01-2018 for changing the name of the Employer from Airsonic Holidays Pvt. Ltd. to Airsonic Worldwide Express which has been disposed off vide order dated 11-06-2018 after hearing both the parties. Accordingly, the said Airsonic Worldwide Express has been impleaded as the Employer in place of Airsonic Holidays Pvt. Ltd. The present issue No. 3 therefore does not arise.

14. Issue No. 3-A and 4:

The Workman contended that the termination of his services amounts to retrenchment and as such in violation of Section 25-F as well as 25-G of the I.D. Act, 1947. On the contrary, the Employer, in its reply, filed in the present proceedings pleaded that it has terminated the services of the Workman w.e.f. 01-10-2001 by way of discharge simplicitor which does not amounts to retrenchment of services.

15. Ld. Rep. Shri Subhash Naik Jeorge, in his synopsis of written arguments submitted that the termination of services of the Workman is in violation of Section 25-F as well as Section 25-G of the I.D. Act, 1947. Section 25-F of the I.D. Act, 1947 provides for procedure for retrenchment.

Section 2 (oo) of the I.D. Act, 1947 defines the term 'retrenchment' and it means as under:

"2 (oo) "retrenchment" means the termination by the Employer of the service of a Workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action but does not include-

- (a) *Voluntary retirement of the Workman; or*
- (b) *Retirement of the Workman on reaching the age of superannuation if the contract of employment between the Employer and the Workman concerned contains a stipulation in that behalf; or*
- (bb) *termination of the service of the Workman as a result of the non-renewal of the contract of employment between the Employer and the Workman concerned on its expiry or of such contract being terminated under stipulation in that behalf contained therein; or]*
- (c) *Termination of the service of a Workman on the ground of continued ill-health."*

16. Thus, the termination of services of any Workman by the Employer for whatsoever reason but does not include termination by way of punishment inflicted by way of disciplinary action and it excludes voluntary retirement, retirement on reaching the age of superannuation, termination of services of the Workman as a result of non-renewal of the contract of employment on its expiry or such contract being terminated under a stipulation in that behalf contained therein and termination on the ground of continued ill-health.

17. In the case in hand, admittedly, the Workman was issued an appointment letter dated 27-09-1994 (Exb.17) by Airfreight Ltd. as a Courier. The said Airfreight Ltd., vide its letter dated 27-01-1996 (Exb.18), has confirmed the services of the Workman with effect from 01-07-1995 as Ground Courier. Further, on the application of the Workman and his subsequent interviewees by Airsonic Holidays Pvt. Ltd., he was issued an appointment letter dated 30-06-2001 (Exb.19). By its another letter dated 31-12-2001 (Exb. 41-colly), Airsonic Holidays Pvt. Ltd. informed the Workman that as the management is in the process of assessing the feasibility of the current operations and that they extend the probation period for the period of one month i.e. 31-01-2002. By its another letter dated 15-12-2001 at Exb. 47-cross, the Workman was informed by the said Airsonic Holidays Ltd. that they have changed the organization Airsonic Holidays Pvt. Ltd. to Airsonic Worldwide Express,

a proprietary firm from 15-12-2001 and that he would be an employee of the Employer. By letter dated 15-12-2001 at Exb. 46, the Workman was informed by the Employer i.e. Airsonic Worldwide Express that he was appointed as a Ground Courier as fresh with effect from 15-12-2001. In terms of clause 2 of the said appointment letter at Exb. 46, during the probation period of six months either of the parties would be entitled to terminate the contract of employment by giving one months' notice and that after the probation period if his services are found good he will be confirmed. By letter dated 31-12-2001 at Exb. 41-colly, the Airsonic Worldwide Express i.e. the Employer, has extended the probation period of the Workman for further period of six months. The said Airsonic Worldwide Express i.e. the Employer terminated the services of the Workman w.e.f. 02-10-2002 by its letter dated 30-09-2002 (Exb. 20).

18. In the present reference, Airfreight Limited, Airsonic Holidays Pvt. Ltd. and DHL Worldwide Express were necessary as a necessary party as Employer. The Workman has however, chose not to proceed against the said Airfreight Limited, Airsonic Holidays Pvt. Ltd. and DHL Worldwide Express for the reasons best known to him only. The Workman has also failed to prove that all the said Airfreight Limited, Airsonic Holidays Pvt. Ltd. and DHL Worldwide Express are one and the same establishment. In the circumstances, no relief can be passed against the said establishments. The Workman has however, proceeded against the Employer i.e. Airsonic Worldwide Express, who happened to be his last Employer.

19. The appointment of the Workman indicates that the employment of the Workman would be under probation for a period of six months from the date of his joining, but management reserves the right to extend the period if necessary. If at the end of the period of probation, he is found suitable, we will confirm your appointment in writing. In terms of clause 5 of the said appointment letter at Exb. 40, it is stated that during the probation period either party will be entitled to terminate the contract of employment by giving one months' notice. After confirmation, the termination of employment by either party will be giving three months' notice. The Workman in his cross-examination admitted that the Employer extended his probation period by six months w.e.f. 31-12-2001 and that neither Airsonic Holidays nor Airsonic Worldwide Express had issued a confirmation letter to him. This shows that the Workman was under probation at the time of termination of his services on 02-10-2002. By its

letter dated 30-09-2002 at Exb. 42, the Employer terminated the services of the Workman w.e.f 02-10-2002 by paying him one months' pay in lieu of notice. The said termination of services of the Workman in terms of clause 1 as well as clause 5 of the appointment letter issued to him. Thus, the said termination of services of the Workman is a discharge simplicitor. The termination of services of the Workman cannot be construed as retrenchment. The termination of services of the Workman is an exception to 2(oo) (bb) of the I.D. Act, 1947. In view of above, I do not find any merits in the submissions of the Workman that the termination of his services is in violation of Section 25-F, Section 25-G and Section 25-H of the I.D. Act, 1947.

20. The appointment letter of the Workman has been signed by Mr. Paul Sequeira, the Branch Manager of the Employer. The termination letter of the Workman has also been signed by the said Mr. Paul Sequeira, the Branch Manager of the Employer. Hence, I do not find any merits in the submissions of Ld. Rep. Shri Subhash Naik, appearing for the Workman. The termination of services of the Workman is just, legal and proper and there is no any illegality in it.

21. Ld. Rep. Shri Subhash Naik has relied upon a judgment in the case of **Huvnesh Kumar Dwivedi (supra)**, is not applicable to the case in hand as the facts of the case before the Hon'ble High Court of is totally different than the case in hand. Hence, it is held that the Employer proved that the action of the Employer in terminating services of the Workman as Ground Courier with effect from 01-10-2001 is legal and justified. The issue No. 3A as well as issue No. 4 are answered in the affirmative.

22. Issue No. 5:

While deciding the issue No. 4 hereinabove, I have discussed and came to the conclusion that the action of the Employer in terminating the services of the Workman as Ground Courier with effect from 01-10-2001 is legal and justified. The Workman is therefore not entitled to any relief. The issue No. 5 is therefore answered in the negative.

In view of the above, I proceed to pass the following order:

ORDER

1. It is held that the action of the management of Airsonic Worldwide Express Ltd., Panaji, Goa, in terminating services of its Workman Shri Nandalal Madkaikar, Ground Courier, with effect from 01-10-2001, is legal and justified.

2. It is held that the Workman, Shri Nandalal Madkaikar, Ground Courier is not entitled to any relief.
3. No order as to cost.

Inform the Government accordingly.

Sd/-

(Suresh N. Narulkar),
Presiding Officer,
Labour Court-II.

Notification

No. 28/3/2018-LAB/Part-I/763

The following award passed by the Industrial Tribunal and Labour Court, at Panaji-Goa on 12-10-2018 in reference No. IT/18/11 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Neetal P. Amonkar, Under Secretary (Labour).

Porvorim, 28th November, 2018.

IN THE INDUSTRIAL TRIBUNAL AND LABOUR COURT

**GOVERNMENT OF GOA
AT PANAJI**

(Before Mr. Vincent D'Silva, Hon'ble Presiding Officer)

Ref. No. IT/18/11

Workmen,
Rep. by the President,
Goa Trade & Commercial
Workers Union,
Velhos' Building, 2nd Floor,
Panaji-Goa. ... Workmen/Party I

V/s

1. M/s. Lima Leitao ... Employer/Party II(1)
2. M/s. Lima Leitao & Co. Pvt. Ltd. ... Employer/Party II(2)
3. M/s. Lima Minerals ... Employer/Party II(2)
Pvt. Ltd.,
H. O. Vasco-da-Gama

Workmen/Party I represented by Ld. Adv. Shri Suhaas Naik.
None present for Employer/Party II(1) & Party II(3).
Employer/Party II(2) represented by Ld. Adv. Shri P. Chawdikar.

AWARD

(Delivered on this the 12th day of the month of October of the year 2018)

By Order dated 13-07-2011, bearing No. 28/19/2007-LAB, the Government of Goa in exercise of powers conferred by Section 10 (1)(d) of the Industrial Disputes Act, 1947 (for short The Act), has referred the following dispute to the Tribunal for adjudication.

"(1) Whether the Charter of demands as mentioned below, served vide letter dated 14-08-2006 by Goa Trade and Commercial Workers Union on the management of M/s. Lima Leitao Workshop, M/s. Lima Leitao and Company Private Limited and M/s. Lima Minerals Private Limited, Usgao, Ponda, Goa, is fair and justified?"

CHARTER OF DEMANDS

A. ARREARS OF INCREMENTS:

- i) The union demands that every worker shall be entitled to increments with effect from 01-05-1998 in the following manner:-
- (a) With effect from ... Rs. 300/- per month per 01-05-1998 worker.
- (b) With effect from ... Rs. 600/- per month per 01-05-1999 worker.
- (c) With effect from ... Rs. 900/- per month per 01-05-2000 worker.
- (d) With effect from ... Rs. 1200/- per month per 01-05-2001 worker.
- (e) With effect from ... Rs. 1500/- per month per 01-05-2002 worker.
- (f) With effect from ... Rs. 1800/- per month per 01-05-2003 worker.
- (g) With effect from ... Rs. 2100/- per month per 01-05-2004 worker.
- (ii) The Union demands that the management should pay the arrears to each of the worker.

B. WAGE SETTLEMENT:

- (i) The Union demands that every worker shall be paid an additional sum of Rs. 1000/- (Rupees one thousand only) per worker, per month and increase in the salary with effect from 01-05-2005.
- (ii) The Union demands that the management shall pay a sum of Rs. 300/- as annual increment with effect from 01-05-2006.

(iii) The Union demands that agreement for a period of 3 years with effect from 01-05-205 to 30-06-2008 shall be executed so that management can enjoy the benefit of peaceful Industrial Relations.

(2) If yes, to what relief the workmen are entitled?"

2. Upon receipt of the reference, it was registered as IT/18/11 and registered A/D notices were issued to both the parties. Pursuant to service of notices, Party I filed a Claim statement at Exb. 11 and Party II filed a Written statement at Exhibit 13.

3. In short, the case of the Party I is that the Union represents all the workmen employed at Party II situated at Usgao engaged in the maintenance and repairs of vehicles and heavy equipments. The wages and allowances fixed at the time of inception of the establishment and appointment of the workmen have been very low and pathetic and same does not take care of their bare minimum basic needs and therefore all the workmen requested to raise Charter of demands on the management to enhance their existing wages, etc. The Union raised the Charter of demands on 14-8-2006 which was not settled by the Party II and due to adamant attitude of Party II, a dispute was raised before the Labour Commissioner, which ended in a failure. The Party I have been working with Party II on a very low salary. The Party II is in a strong financial position to meet their demands. The workmen are therefore entitled for the reliefs claimed.

4. In the Written statement, the Party II has claimed that the dispute is not maintainable. The Party I have filed the present dispute only to pressurize and harass the Party II without any justifiable reasons inspite of knowing the critical situation of Party II. No case has been made out by Party I for the relief claimed and therefore, the reference be dismissed.

5. The Party I filed a rejoinder at Exb. 14 denying the case put forth by Party II in the written statement.

6. Issues that came to be framed at Exh. 15 are as follows:

- (1) Whether the Party I proves that the demands raised by the workmen/Party I in their Charter of demands dated 14-08-2006 with retrospective effect from 01-05-2005 along with the payment of arrears are legal and justified?

- (2) Whether Party I proves that the Goa Trade and Commercial Workers' Union or their General Secretary is having locus to raise the dispute on behalf of the said workmen?
- (3) Whether the Party II proves that the reference is not maintainable as the claim of the workmen is not an "Industrial Dispute" as defined under Section 2(k) of the Industrial Disputes Act, 1947?
- (4) What Relief? What Award?

7. Heard arguments.

8. My answers to the above issues are as follows:

- Issue No. 1 ... In the Negative.
 Issue No. 2 ... In the Negative.
 Issue No. 3 ... In the Negative.
 Issue No. 4 ... As per final order

REASONS

Issue No. 1:

9. Learned Adv. Shri Suhaas Naik for Party I has made an endorsement on the affidavit of R. D. Mangueshkar and also submitted that Party I does not wish to pursue the present matter as the workmen involved in the reference are not contactable and have left their places, so also their whereabouts are not known. He therefore submitted that necessary order be passed disposing the matter, to which Learned Adv. Shri P. Chawdikar for the Party II has submitted that considering the above submissions of Adv. for Party I, the Party II also does not wish to lead evidence in the present matter and therefore, the reference be rejected. It appears that the Party I/workmen are not interested in pursuing the matter nor led any evidence in support of the above issue. The Party I has merely filed an affidavit of Shri R. D. Mangueshkar, General Secretary of Goa Trade and Commercial Workers Union. The burden to prove that the Charter of demands as mentioned vide letter dated 14-08-2006 of the Union on the management is fair and justified lies on the Party I workmen and unless said burden is discharged by the workmen, the onus will not shift on Party II Company to prove otherwise. The Party I workmen have neither led any evidence nor proved the above issue. The Party I therefore have failed to discharge the burden of proving issue No. 1. Hence, the above issue is answered in the negative.

Issue No. 2:

10. The Party I have not proved that Goa Trade and Commercial Workers' Union or their General Secretary is having locus to raise the dispute on

behalf of the Union by leading evidence and producing necessary documents in support of their case and hence, the issue No. 2 is answered in the negative.

Issue No. 3 and 4:

11. The Party II has also not led any evidence that the reference is not maintainable as the claim of the workmen is not an "Industrial Dispute" as defined under Section 2(k) of the Industrial Disputes Act, 1947 and hence the above issue is also answered in the negative. The Party I having failed to prove that they are entitled for the reliefs claimed, the issue No. 4 is answered in the negative.

12. In view of the above, I pass the following:

ORDER

- (i) It is hereby held that the Charter of demands as mentioned in the Schedule vide letter dated 14-08-2006 by Goa Trade and Commercial Workers Union on the management of M/s. Lima Leitao Workshop, M/s. Lima Leitao and Company Private Limited and M/s. Lima Minerals Private Limited, Usgao, Ponda, Goa, are not fair and justified.
- (ii) The Party I/Workmen are therefore not entitled to any reliefs.
- (iii) No order as to costs.
- (iv) Inform the Government accordingly.

Sd/-

(Vincent D'Silva),
 Presiding Officer,
 Industrial Tribunal and
 Labour Court.

Notification

No. 28/3/2018-LAB/Part-I/762

The following award passed by the Industrial Tribunal and Labour Court, at Panaji-Goa on 19-10-2018 in reference No. IT/33/00 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Neetal P. Amonkar, Under Secretary (Labour).

Porvorim, 28th November, 2018.

IN THE INDUSTRIAL TRIBUNAL AND LABOUR
COURTGOVERNMENT OF GOA
AT PANAJI(Before Mr. Vincent D'Silva, Hon'ble Presiding
Officer)

Ref. No. IT/33/00

Workmen,
Rep. by the President,
Mumbai Mazdoor Sabha,
Kenedy House, 4th Floor,
Near Kenedy Bridge,
Goregaonkar Road,
Mumbai-400 007. ... Workmen/Party I

V/s

M/s Binani Industries Limited,
(Glass Fibre Division)
Colvale, Bardez-Goa. ... Employer/Party II

Workmen/Party I represented by Ld. Adv. Mrs. N. Gaude.

Employer/Party II represented by Ld. Adv. Shri A. V. Nigalye.

AWARD

**(Delivered on this the 19th day of the month
of October of the year 2018)**

By Order dated 06-04-2000, bearing No. IRM//CON/MAP/(22)/2000/1910, the Government of Goa in exercise of powers conferred by Section 10 (1)(d) of the Industrial Disputes Act, 1947 (for short The Act), has referred the following dispute to the Tribunal for adjudication.

- "(1) Whether the situation of non-employment of workmen employed in M/s. Binani Glass Fibre, Colvale, as are represented by Mumbai Mazdoor Sabha with effect from 24-01-2000 onwards is as a result of any strike by the workmen or on account of any lock-out by the management of M/s. Binani Glass Fibre?*
- (2) In any case, what relief either of the parties, as the case may be, are entitled to?"*

2. Upon receipt of the reference, case No. IT/33/00 came to be registered and notices were issued to both the parties under registered A.D. post. Upon their appearance, Party I filed a Claim statement at Exh. 5, and Party II filed the Written statement at Exh. 8 and additional written statement at Exh. 15.

3. In short, the case of Party I is that the Party I is the workmen employed with Party II who is engaged inter alia in the manufacture of glass fibres etc. and the financial position of the company

is very sound. On or about 22-11-1999, an overwhelming majority of the workmen decided to further collective bargaining under the leadership of Mumbai Mazdoor Sabha, however the management in order to break the workmen's unity started various oppressive and anti labour tactics against the workmen with a view to harass and victimize the workmen like suspension of active committee members on false and fabricated charges of the alleged misconducts and enquires were initiated against them without even considering their replies. The management in the morning of 24-2-2000 all of a sudden arbitrarily to destabilize the workmen decided to stop giving them any work and made them sit idle on the shop floor. The management insisted that the workmen should first divest themselves of the membership of Sabha and thereafter, any request on behalf of the workmen could be considered. However, none of the workmen bowed to the illegal dictates of the management.

The company thereafter on some false and concocted pretext called the Police and asked them to accept the patently illegal and unjustified demands of the company and even when it failed, they asked the Police authorities to forcibly evict the workmen from the factory premises by use of physical force and they were kept out with the help of Police for another few days. The Sabha was constrained to address a letter dated 27-1-2000 to the company placing on record the facts and requested the company to provide normal work to the workmen, however the company instead of acceding to the request filed a Civil Suit before Civil Judge, Senior Division at Mapusa restraining them from coming within the radius of 100 meters from the factory premises which prayer was granted by order dated 28-1-2000 and the company deliberately kept the workmen out and has not even paid them the wages for the period since January, 2000. The Civil Judge, Senior Division by order dated 13-1-2000 was pleased to allowed the Party II to withdraw the suit. The State of Goa filed a charge sheet against 21 workmen before Judicial Magistrate, First Class, Mapusa bearing case No. 57/2000/A pertaining to alleged unlawful assembly on 26-11-2000 at the main gate of the factory claiming that the said workmen restrained vehicles and workmen from entering the factory.

5. The Learned Magistrate thereafter discharged all the workmen by order dated 7-5-2000. The Party I thereafter requested the company vide letter dated 27-1-2000 to provide normal work to the workmen and pay their dues, however instead of replying to the said letter continued with its illegal

and malafide activities against the workmen. The Sabha thereafter sought intervention of the Commissioner of Labour for providing work to the workmen and to pay full wages. The Assistant Labour Commissioner thereafter conveyed a meeting, however the management vide their letter dated 4-2-2000 stated that they did not wish to attend any discussion. The company thereafter issued a notice whereby it called upon the workmen to submit individual undertakings that they are withdrawing their alleged agitation and are ready and willing to resume the work. The Sabha thereafter raised its protest against the notice of the company and emphasized that they are always willing to work and had been reporting to work at the factory since 24-1-2000 and requested that they be paid their wages. The company failed and neglected to reply to the said letter and had no other alternative but to proceed with the conciliation proceedings and informed the Commissioner that since the company is not allowing the workmen to resume their normal duties, the said illegal action amounted to effecting an illegal lock-out without following due process of law.

6. The conciliation proceeding commenced on 22-2-2000 but the company deliberately avoided attending the proceedings and hence the officer concerned was constrained to record failure of conciliation proceedings and submitted it to the Government. The company was beyond approach for initiating normal dialogue and the appropriate Government thereafter referred the dispute to Industrial Tribunal. The order of reference however was beyond its jurisdiction and as such the Union requested the Commissioner of Labour to carry out necessary amendment in the impugned order of reference dated 29-4-2000, however the Commissioner failed to consider the same. The Party I challenged the said order before the Hon'ble High Court in the Writ Petition and the Hon'ble High Court was pleased to direct that the Party I was at liberty to agitate the questions raised in the said Writ Petition before the Tribunal. The illegal decision of the company for not providing the work amounts to breach of implied terms of condition of service and employment and therefore, the Party I demanded for declaring the lock-out as illegal and to allow the workmen to resume their normal duties and pay them full wages for the period they were kept out of the employment since 24-1-2000. Hence, the reference.

7. In the Written statement, Party II inter alia contended that there were about 30 workmen when the factory was commissioned in 1996 and in

March 1998 there were about 110 workmen in which year all the workers of Party II joined the Union viz. Goa Trade and Commercial Workers' Union and subsequently, in October, 1998, the workers formed their own Union viz. Binani Glass Fibre Employees Union, which submitted a Charter of demands to the management and after protracted negotiations, a settlement dated 15-4-1999 was signed which covered allowances payable to the workmen. The Union also submitted a Charter of demands on 24-9-1999 demanding revision of wages and allowances, which was in contravention of settlement dated 15-4-1999. However, the Party II expressed willingness to discuss the demands relating to wages. The Party II also received a letter from Mumbai Mazdoor Sabha stating that the workers had joined their Union and threatening them that on refusal to recognize it as sole bargaining agent, the management will invite trouble. The workers joined the Sabha due to coercion against their wishes. The Mumbai Mazdoor Sabha continued to address threatening letters to the management and their attempts in coercing the management failed.

8. The Party II suspended three employees on 15-10-1999 for serious acts of misconduct on the premises of establishment and they were subsequently charged with committing acts of indiscipline which were proved in the enquiry and they were subsequently dismissed. The Party I recruited four employees purely on temporary basis during the pendency of the proceedings. The local leaders of the Sabha approached the management with a demand to remove them from service and also revoke suspension of said three workers. On 24-1-2000, six workers contacted the General Manager and demanded that the four employees be removed from the service which demand was refused and the workers threatened him that they would force the workers to go on indefinite strike and paralyzed the work of the company. Immediately, thereafter the said workers and some others went inside the plant and gave a call to the employees to come out of the factory and join the strike. A section of workers responded to their call and struck work. They also prevented the work of contractors' labourers and temporary employees from performing their duties and went on lightning strike and indulged in violence, stopped ingress and egress of employees and vehicles and indulged in other unlawful activities. The said workers intimidated and threatened the officers of the company and obstructed the movement of the trucks.

9. The Party II after their strike exhibited a circular on 25-1-2000 on the notice board on the main gate informing the workers that they have gone on flash strike from 24-1-2000 without any justifiable reason and notice and were called upon to join upon the duties immediately and were informed that they will not be entitled for wages for the period they remain on strike and are liable for disciplinary action for their illegal acts. The Party II also issued a circular that some of the striking workers were still continuing to remain on the premises of the factory and they were directed to vacate the premises immediately. The Party II also addressed a letter to Police Sub Inspector, Mapusa Police Station and lodged a complaint. The factory of Party II was very sophisticated industrial unit and the machinery and the equipment are very expensive. The process is required to be continued round the clock and the stoppage of even a few hours results in shut down of the plant. The Party II filed a suit before the Civil Judge, Senior Division, Mapusa. All the workers in the factory did not go on strike and they continued with their duties. The other workers remained absent due to threats.

10. The Party II received a notice from Labour Commissioner about the meeting and it informed them that the section of workers were on strike and have been threatening the other workers, obstructing the movement of vehicle and staff and indulging in other activities. The workers who were on strike were in process of changing their mind and joined the duties and the Party II informed them that on receipt of individual letters from the workmen, the Party II would take appropriate steps regarding their deployment and pursuant to the said notice, several workers joined the duties. The situation of unemployment from 24-1-2000 was caused due to the strike by the workers and not on account of lock-out by the management. The strike by workers was patently unjustified and illegal. The acts of the Party I caused heavy loss to Party II. The Party I are therefore not entitled for any relief.

11. In the rejoinder at Exh. 10, the Party I denied the case put forth by Party II in the Written statement.

12. It is a matter of record that my predecessor framed issues at Exh. 11 on 2-7-2002, so also issues were framed on 19-9-2007 at Exh. 23. It is also seen that both the issues framed at Exh. 11 and Exh. 23 were re-cast on 24-9-2007 at Exh. 25 which are as follows:

- (1) Does the Party I proves that the order of reference to adjudicate situation of non-employment of the workmen is as a result of their strike, is illegal, erroneous, untenable at law and non-est?
- (2) Does the Party I prove that, non-employment of workmen represented by Mumbai Mazdoor Sabha w.e.f 24-1-2000 is on account of illegal and/or unjustified lockout commenced by the Party II?
- (3) Does the Party II prove that non-employment of the workmen represented by Mumbai Mazdoor Sabha w.e.f 24-1-2000 is on account of illegal and/or unjustified strike commenced by the said workmen?
- (4) Whether the workmen represented by Mumbai Mazdoor Sabha are entitled to the relief as claimed?
- (5) What Award?

13. In support, Party I examined Shri Nitesh Atmaram Shetye as a witness and produced on record a copy of W.P. No. 228/2000 at Exh. 28, a copy of letter dated 22-11-1999 addressed by the President of the Union to the company at Exh. 29, a copy of letter dated 27-1-2000 addressed by the President of the Union to the company at Exh. 30, a copy of order dated 28-1-2000 in CMA 23/2000 Sp. Civil Suit 6/2000, Mapusa at Exh. 31, a copy of letter/demand dated 27-1-2000 addressed by the President of the Union to the company at Exh. 32, a copy of letter/demand dated 1-2-2000 addressed to the Commissioner, Labour at Exh. 33, a copy of Minutes of meeting held before the ALC, Mapusa at Exh. 34, a copy of letter dated 8-2-2000 addressed by the President of the Union to the company at Exh. 35, a copy of notice dated 9-2-2000 along with encl. at Exh. 36 colly, a copy of reply of the Union dated 12-2-2000 to the notice displayed by the company at Exh. 37, a copy of justification statement at Exh. 38, a copy of letter dated 19-2-2000 addressed by the Union to the company along with encl. at Exh. 39 colly, a copy of Minutes of conciliation proceedings held by ALC, Panaji at Exh. 40, a copy of failure report dated 28-2-2000 at Exh. 41, a copy of letter dated 13-3-2000 addressed by the Union to the Secretary (Labour) at Exh. 42, a copy of letter dated 29-4-2000 addressed by the Union to the Secretary (Labour) along with encl. at Exh. 43 colly, a copy of order dated 30-6-2006 in W.P. 20/2000 at Exh. 44, a copy of Judgment dated 5-2-2003 in Criminal Case No. 57/2000, Mapusa at Exh. 45, a copy of order dated 31-5-2000 passed in CMA/23/00 in Spl. Civil Suit, Mapusa at Exh. 46, a

copy of application dated 13-10-2001 for withdrawal of Spl. Civil Suit No. 6/2000 along with order at Exh. 47, a copy of final report dated 26-1-2000 at Exh. 48.

14. On the other hand, the Party II examined Shri K. V. S. Krishnakumar as witness and produced on record copies of letters dated 15-12-1999 addressed to three workmen at Exh. 50 colly, copies of charge sheets dated 20-12-1999 issued to said three workmen at Exh. 51 colly, copies of Circulars dated 25-1-2000 at Exh. 52 colly, a copy of police complaint dated 25-1-2000 at Exh. 53, copies of appointment letters dated 6-1-2000 issued to four workmen at Exh. 54 colly, a copy of order dated 31-5-2000 in CMA 23/00 along with encl. at Exh. 55 colly, a copy of order dated 28-1-2000 in CMA 23/00 along with encl. at Exh. 56 colly, a copy of letter dated 4-2-2000 addressed to the Labour Commissioner at Exh. 57, a copy of letter dated 22-2-2000 addressed to ALC at Exh. 58, copies of notices dated 9-2-2000 and 12-2-2000 at Exh. 59 colly, copy of order dated 17-8-1999 at Exh. 60, a copy of format of an undertaking at Exh. 61 and copies of local daily, Tarun Bharat dated 29-1-2000 and 26-1-2000 and Navhind Times dated 26-1-2000 at Exh. 62 colly. The Party II also examined Shri K. Anantha Mallya as their second witness and produced on record the copies of appointment letter dated 11-12-1995 and promotion letter dated 18-3-1998 at Exh. 75 colly, a copy of resignation letter dated 1-9-2001 at Exh. 76, a copy of relieving letter dated 1-12-2001 at Exh. 77, a copy of Memorandum of settlement dated 15-4-1999 at Exh. 80, a copy of demands dated 29-9-1999 along with letter dated 12-10-1999 at Exh. 81 colly, a copy of ledger for the year 1999-2000 at Exh. 82.

15. Heard arguments. Notes of Written arguments came to be placed on record by Party I as well as Party II.

16. I have gone through the records of the case and have duly considered the arguments advanced. My answers to the above issues are as follows:

- Issue No. 1 ... In the Negative.
- Issue No. 2 ... In the Negative.
- Issue No. 3 ... In the Affirmative.
- Issue No. 4 ... In the Negative.
- Issue No. 5 ... As per final order.

REASONS

Issue No. 1:

17. Learned Adv. Ms. N. Gaude for Party I has submitted that the Order of Reference to the extent that it refers the question of alleged strike to

adjudication is illegal and without authority of law since it was not the case of Party II before the Commissioner that there was any strike by Party I. The power of appropriate Government is confined to the demand made under Industrial Disputes Act. There was no material before the Commissioner to come to an erroneous conclusion that there was any strike resorted by the workmen. The Commissioner was not called upon to intervene the issue of alleged strike and hence, the said order is passed without any jurisdiction. The demand was raised by Party I for providing work and wages before the Conciliation Officer and Party II did not participate in the said proceedings. There was no specific demand by Party II for referring the dispute and therefore, the order of the appropriate Government dated 6-04-2000 to the extent of the issue of alleged strike by the workmen has to be deleted and in support, she relied upon the case of **The Sindhu Resettlement Corporation Ltd vs. The Industrial Tribunal of Gujarat and Others, AIR 1968 SC 529**.

18. Admittedly, the Party I filed a Writ Petition before the Hon'ble High Court in the matter of order of reference dated 6-4-2000 made by the Government of Goa under Section 10(1)(d) of the Industrial Disputes Act and the Hon'ble High Court vide order dated 30-6-2006 in Writ Petition No. 220/2000 allowed the parties to raise the contention of the Party I in the present reference and to agitate them before the Industrial Tribunal. However, Ld. Adv. Shri A. Nigalye for Party II has submitted and rightly so that the Order of Reference is an administrative order and no lis is involved in respect thereof. The adequacy or the sufficiency of the material before the appropriate Government is beyond the pale of judicial scrutiny. The Order of Reference cannot be canvassed closely to see if there was material before the Government, as if it was a judicial or quasi judicial order. The Government can even refer an apprehended dispute. The Industrial Tribunal being a creature of statute, i.e. Industrial Disputes Act, the order of reference issued under that Act cannot be challenged before it. The case of Party I that the non employment of workmen is on account of illegal and or unjustified lock out commenced by Party II or the case of Party II that the non employment of workmen w.e.f 24-1-2000 is on account of illegal and/or unjustified strike have to be proved on merits. The Tribunal has jurisdiction of going through pleadings of the parties and find out the exact nature of the dispute between the parties as held in the case of **Shambu Nath Goyal v/s Bank of Baroda, AIR 1978 SC 1088** and therefore the

above contention of Ld. Adv. Gaude and reliance placed on the above citation pales into insignificance. Hence, the above issue is answered in the negative.

Issue No. 2 & 3:

19. Ld. Adv. Ms. N. Gaude for Party I has submitted that the management stopped giving work to the employees on 24-1-2000 and as such the workers were forced to sit idle on the shop floor resulting in illegal lock-out. The management also obtained ex-parte injunction from the Court thereby restraining the workers from coming within the radius of 100 meters from the factory premises. The Party I issued various letters demanding work and to pay wages which were not replied by Party II. She further submitted that the evidence of Shri K.V.S. Krishnakumar cannot be considered as he was not the authorized Officer; moreover he has admitted that the company did not attend any sitting before Conciliation Officer. The evidence of second witness also cannot be considered as he has not produced on record any documents to support the statement that he was present in the company on 24-1-2000. The criminal case filed against the workers of Party II for forming unlawful assembly has been decided in favour of Party I. The Civil Suit filed against the workers was dismissed as withdrawn. The Party I has proved that non employment of workmen is on account of illegal and unjustified lock-out by Party II and therefore, the Party I proved issue No. 1 in their favour.

20. The Party I has led evidence through Nitesh Shetye. He has claimed that in the morning of 24-1-2000, the management all of a sudden arbitrarily to destabilize the workmen, decided to stop giving any work and made them sit idle on the shop floor and despite repeated requests for clarification as to why no work was being provided, the management insisted that they should first divest themselves from the membership of the Sabha and thereafter any request could be considered. In the cross examination on page 25, he admitted that they used to meet Shri Krishnakumar in connection with their minor problems which they used to discuss with him, which shows that there was no hostility between the management and the Union. He further claimed that on 24-1-2000 when they met Krishnakumar, he told them not to be the members of the Union or else lock-out will be declared in the factory, which has not been supported by any documents. He further claimed that they had gone to meet Krishnakumar from the respective departments after finishing their work and that on 24-1-2000, he was in the

Instrumentation Department where he was doing maintenance of winders. He claimed that the work was going on in the department till 3.30 p.m. and that there was a meeting between Krishnakumar and the committee at around 3.45 p.m. The above statement belies the case of Shri Nitesh Shetye in para 5 of the claim statement that the management all of a sudden resorted to lock-out in the morning of 24-1-2000.

21. Shri Nitesh Shetye has also admitted that the plant has also furnace and the material used for making glass fibre is melted in the said furnace and it is operative round the clock. He also admitted that the required temperature is maintained to ensure that the material is not crystallized. He also admitted that even if there is fluctuation of the electricity for couple of seconds, the whole bushing system gets disturbed for more than three hours. He also admitted that molten state of the material turns back into solid state only when the furnace cools down and that furnace is never allowed to be cooled down. He also admitted that if furnace is allowed to be cooled down, the furnace have to be replaced but cannot say what is the cost that will be incurred to replace the furnace, which fortifies the case of the Party II that the factory is a very sophisticated unit and the manufacturing process involves melting the raw material inside the furnace and that the process is required to be continued round the clock and stoppage of even few hours results in crystallization of molten material resulting in shut down of the plant and therefore, there cannot be any question of lock-out by the management.

22. The Party II examined Shri Krishnakumar, Vice President (Admin) who has filed the affidavit as per the written statement. He claimed that Party II suspended three employees viz. Sazu B Naik, Francis Coutinho, Rajendra Naik for committing serious acts of misconduct on 15-12-1999 and were subsequently charge sheeted and during the pendency of disciplinary proceedings, recruited four employees on temporary basis as company could not afford loss of production in the plant. He also claimed that on 24-1-2000 at about 4.00 p.m., six workers including Nitesh Shetye contacted him in the factory premises and demanded that the said four employees be removed from the service and threatened him that they would force the workers to go on strike and would paralyze the working of glass fibre division and that section of the workers responded to their call and struck work. He also claimed that their action was pre-planned and organized in such a manner that the general shift,

first shift and second shift workers would collectively gather at the gate at around 4.00 p.m. and bring out the activities to a standstill. He also stated that the Party II informed the Assistant Labour Commissioner vide letter dated 22-2-2000 that the workers of Glass fibre division had gone on a flash strike on 21-2-2000 in the afternoon.

23. Shri Krishnakumar has produced on record the letter dated 22-2-2000 at Exh. 58 which shows that Party II brought to the notice of Assistant Labour Commissioner, Mapusa that the workers had gone on strike w.e.f. 24-1-2000 and continued to indulge in illegal and unlawful activities and inspite of their requests, they continued on 'dharma' at the gate. Exhibit 41 is the report of failure of Conciliation proceedings dated 28-2-2000 wherein it was observed that the Manager vide letter dated 4-2-2000 stated that a section of workmen had gone on lightning illegal and unjustified strike without giving notice to the management. The Party II also produced the Minutes of the meeting at Exh. 40 dated 22-2-2000 wherein it is mentioned that the Conciliation officer had received their letter dated 22-2-2000 which is at Exh. 58, wherein it was brought to the notice of the Assistant Labour Commissioner that there was a dispute pending regarding existence of strike. The Party II has also produced on record Circulars dated 25-1-2000 at Exh. 52 colly wherein it was informed that the workers have gone on flash strike from 24-1-2000 afternoon without any justifiable reason and notice and that they were called upon in their own interest to join their duties immediately. The said circulars were issued on 25-1-2000 immediately after the alleged strike on 24-1-2000 after 4.00 p.m. The immediate reaction on the part of Party II to the strike by issuing circulars shows that it was a strike and not the lock-out.

24. The Party I on the other hand had written a letter dated 27-1-2000 at Exh. 30 claiming that since last four days, the Party II have been keeping the workmen idle without providing any work at all and that the workers are made to sit in their respective departments. The letter however does not mention that Party II resorted to illegal lock-out in the morning of 24-1-2000. If the workers were not given any work for last four days, it means that the alleged lock-out was from 23-1-2000 and not from 24-1-2000 as claimed by them in the claim statement. The Party I have also written a letter dated 1-2-2000 at Exh. 33 wherein they have claimed the management had stopped providing work to the workmen since 23rd January, 2000 and kept them without any work. The Party II have also produced a letter dated 8-2-2000 at Exh. 35 which

also mentions that the management has not been providing work to the workmen since 23-1-2000. The Party I therefore are not certain as to which date the management had locked-out the workers. The letters mentioned above refer to 23-1-2000 as the date of lock-out, while the Claim statement and the affidavit of Mr. Nitesh speak of the different date and time of the alleged lock-out.

25. The Party II also produced on record a copy of the show-cause notice dated 28-1-2000 in the Civil Suit No. 6/2000 at Exh. 31 filed before Civil Judge, Senior Division, Mapusa in which the Party I workers were restrained from assembling within the distance of 100 mts. radius from the compound wall and main gate of the factory but curiously enough, they were not restrained from entering the factory premises. Exhibit 55 is the order passed in the said Civil suit by which the application for injunction was allowed and the Party I workmen were restrained from obstructing any employees, trainees, etc. from entering the factory of the Party II. The Party II have also produced the notices dated 9-2-2000 at Exh. 59 colly claiming that some of the workers who had struck the work from 24-1-2000 onwards are withdrawing the strike and that they welcome the move of the workers wanting to withdraw the strike and resume the work. The application at Exh. 55 colly is for withdrawal of suit after all the workers have joined their duty, which application was not objected by Party I workmen. The above documents therefore clearly show that it was not the lock-out but an illegal strike resorted by the workmen. The statement of Nitesh Shetye that work was going on till 3.30 p.m. on 24-1-2000 negates the case of Party I in the claim statement as well as in the above letters that the workers had not given work and were locked-out from the factory premises.

26. Admittedly, the factory of Party II is a sophisticated unit and as stated above, the machinery and equipment are very expensive. The manufacturing process involves that the factory continues round the clock and any stoppage in work results in shut down and therefore there is no question of not keeping the factory running as it would cause huge loss, besides damage to the plant and machinery. The Press cuttings of newspapers, dated January 26, 2000 at Exh. 62 colly also show that the Party I workers boycotted work in protest against management policy of recruiting workers from other States. The acquittal of the workers by the Criminal Court as per Exh. 45 will not have any bearing on the present case as the principles involved in criminal case and the proceedings before the Industrial Tribunal are

totally different. It is therefore all the documents produced by Party II clearly show that it was not a shut down/lock-out but a strike resorted to by Party I workers. The Party II also examined Shri K. Ananthamanya, HR-Manager. He also claimed that when he was sitting in his office on 24-1-2000 at 3.45 p.m., he received a call from Security Personnel that the workers who were supposed to attend the duty in the second shift at 4.00 p.m. have assembled in front of the security cabin and when he went there and made enquiries, they informed him that they were asked by the Union committee members not to attend the duties till they get the further instructions and at that time, he found that the members of the union were having discussions with General Manager (Personnel and Admin.) Shri Krishnakumar in the restroom of the company and he found the workers including Nitesh Shetye shouting slogans and that they also instructed other workers not to go inside.

27. Shri K. Ananthamanya also claimed that the workers also threatened some workmen to leave their work spot and that around 4.30 p.m. when the management representatives were requesting the workers to give up the agitation, they did not listen and demanded that the management should remove the suspension of three workmen and terminate services of temporary workmen recruited by them and to bring situation under control, the management made a complaint with the Mapusa Police. He has also supported the case of Shri Krishnakumar in material particulars and has narrated the incident in detail. He has not been shaken in the cross examination. He denied the suggestion that he was not present in the office and that due to illegal lock-out, the workers were prevented from coming to the factory. Be that is it may, the case of Party I workmen that the management has not provided the work to the workers and that it was an lock-out has not been proved. The materials on record clearly indicate that the workers raised the demands and as the said demands were not met, the workers went on illegal strike. It is therefore, the Party I have failed to prove that their non employment is a result of illegal and unjustified lock-out commenced by Party II. On the contrary, the Party II has sufficiently proved that the non employment of the workmen is on account of their illegal strike. It is therefore, the issue No. 2 is answered in the negative and issue No. 3 is answered in the affirmative.

Issue No. 4 and 5 :

28. Once it is proved that the Party I workmen had gone on illegal and unjustified strike, there is no question of granting any relief to them as prayed

for on the principle of 'No work, No wages' as laid down by the Hon'ble Apex Court in the case of **Bank of India v/s T. S. Kelawala, 1993 1 CLR 748**. The Apex Court has further observed that 'it is not enough that the employees attend the place of work. They must put in the work allotted to them. It is for the work and not for their mere attendance that the wages/salaries are paid'. The Party I workmen are therefore not entitled for any reliefs. Hence, the above issues are answered accordingly.

29. In the result, I pass the following:

ORDER

- (i) It is hereby held that the situation of non-employment of workmen employed in M/s. Binani Glass Fibre, Colvale, as are represented by Mumbai Mazdoor Sabha with effect from 24-01-2000 onwards is as a result of a strike by the workmen and not on account of any lock-out by the management of M/s. Binani Glass Fibre.
- (ii) The Party I workmen are therefore not entitled to any reliefs.
- (iii) No order as to costs.
- (iv) Inform the Government accordingly.

Sd/-

(Vincent D'Silva),
Presiding Officer,
Industrial Tribunal and
Labour Court.



Department of Personnel

—
Order

No. 15/1/99-PER (Part)/3308

Read: Order No. 15/19/2012-PER (Part)/731 dated 09-03-2018.

On the recommendation of the Goa Service Board and with the approval of the Government, posting of the following officers in the cadre of Mamlatdars/Jt. Mamlatdars/Asst. Director of Civil Supplies is ordered in public interest, with immediate effect:

Sr. No.	Name	Place of posting
1	2	3
1. Shri Rahul Chandrakant Desai	Jt. Mamlatdar-V, Tiswadi.	
2. Shri Rajaram Yeshwant Parab	Jt. Mamlatdar-III, Pernem.	

1	2	3
3. Kum. Ana Rita Maria Paes	Jt. Mamlatdar-IV, Salcete.	
4. Shri Anant Rajaram Malik	Jt. Mamlatdar-V, Salcete.	
5. Smt. Akshaya Anish Amonkar	Jt. Mamlatdar-VI, Bardez.	
6. Kum. Rupa Paramsivam	Vigilance Officer-II, Vigilance Department.	

All the above officers shall take charge and submit compliance report.

By order and in the name of the Governor of Goa.

Harish N. Adconkar, Under Secretary (Personnel-I).
Porvorim, 13th December, 2018.

◆◆◆

Department of Public Health

Order

No. 44/16/2014-I/PHD/3121

Government is pleased to accept the resignation tendered by Dr. Pranay Budkule, Junior Physician under Directorate of Health Services and to relieve him from the post of Junior Physician under Directorate of Health Services with immediate effect.

By order and in the name of the Governor of Goa.

Maria Seomara Desouza, Under Secretary (Health-II).
Porvorim, 11th December, 2018.

◆◆◆

Department of Revenue

Order

No. 26/2/98-RD (Part-II)/2613

Ex-post facto approval of the Government is hereby accorded for extension of ad hoc promotion granted to Kum. Domiana Nazareth, as SSLR, at the Directorate of Settlement and Land Records for the interim period w.e.f. 01-01-2018 to 21-03-2018 i.e. 02 months and 21 days.

This issues with the approval of G.P.S.C. conveyed vide their letter No. COM/II/11/29(1)/2015/880 dated 19-11-2018.

By order and in the name of the Governor of Goa.

Sudin A. Natu, Under Secretary (Revenue-I).
Porvorim, 12th December, 2018.

Office of the District Magistrate, North Goa

Order

No. 15/1/2018-MAG/SC & ST Atrocities/4667

Whereas, in terms of sub-section (4) of Section 12 of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Rules, 1995, the District Magistrate or the Sub-Divisional Magistrate or any other Executive Magistrate shall make arrangements for providing immediate relief in cash or in kind or both to the victims of atrocity, their family members and dependants according to the scale as in the Schedule annexed to the rules. Such immediate relief shall also include food, water, clothing, shelter, medical aid, transport facilities and other essential items necessary for human beings.

In view of above, the Dy. Collector and Sub-Divisional Magistrates are hereby designated as the authorised officer within their respective jurisdiction to entertain and dispose off any complaint received from or on behalf of the victim of atrocity under the provisions of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 and the Rules provided thereunder. The concerned Sub-Divisional Magistrate shall afford Top Priority to such cases and dispose it off in a time bound manner as per requirements of the Act.

Levinson J. Martins, District Magistrate, North Goa.

Panaji, 5th December, 2018.

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Department of Sports and Youth Affairs

DIRECTORATE OF SPORTS AND YOUTH AFFAIRS

Notification

No. DSYA/SW/Notification-BBJKA/2018-2019/3137

Constitution of Selection Committee for selection of Sportspersons/Sports Organisers for the Bakshi Bahaddar Jivabadada Kerkar Award.

The following Committee for the selection of the application for the Award of Bakshi Bahaddar Jivabadada Kerkar State Sports Award, approved by the Government of Goa is hereby published for the information of the public and shall come into force from the date of publication in the Official Gazette.

OFFICIAL GAZETTE — GOVT. OF GOA

SERIES II No. 38

20TH DECEMBER, 2018

1. Secretary (Sports)	— Chairman.	Department of Transport
2. Director of Sports & Youth Affairs	— Convenor.	Directorate of Transport
3. Executive Director (SAG)	— Member.	Order
4. Dy. Director (Sports)	— Member.	No. D.Tpt/EST/244/Dy. D.T./Part File-I/2018/6241
5. Shri Gurudatta Bhakta (Secretary, Goa Olympic Association)	— Member.	On the recommendation of the Goa Public Service Commission, Panaji conveyed vide their letter No. COM/II/11/49(1)/2006/257 dated 07-11-2018, the Government is pleased to promote Shri Nandakishor Arolkar, Assistant Director of Transport to the post of Deputy Director of Transport (Group 'A' Gazetted) in the Pay Band of Rs. 15600-39100 & Level 10 of Pay Matrix on regular basis with effect from 01-01-2019 and post him as Deputy Director of Transport, South, Margao.
6. Shri Brahmanand Shankwarkar	— Member.	
Arjuna Awardee		The said Officer shall be on probation for a period of two years.
7. Shri Bruno Coutinho,	— Member.	By order and in the name of the Governor of Goa.
Arjuna Awardee		
8. Shravan Dubashi,	— Member.	
Sports Promoter		

By order and in the name of the Governor of Goa.

Anjali Sehrawat, IAS, Director & ex officio Joint Secretary (Sports & Youth Affairs).

Panaji, 11th December, 2018.

Order
No. D.Tpt/EST/244/Dy. D.T./Part File-I/2018/6241

On the recommendation of the Goa Public Service Commission, Panaji conveyed vide their letter No. COM/II/11/49(1)/2006/257 dated 07-11-2018, the Government is pleased to promote Shri Nandakishor Arolkar, Assistant Director of Transport to the post of Deputy Director of Transport (Group 'A' Gazetted) in the Pay Band of Rs. 15600-39100 & Level 10 of Pay Matrix on regular basis with effect from 01-01-2019 and post him as Deputy Director of Transport, South, Margao.

The said Officer shall be on probation for a period of two years.

By order and in the name of the Governor of Goa.

Nikhil Desai, Director & ex officio Addl. Secretary (Tpt.).

Panaji, 17th December, 2018.

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